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IV-D Partnership for Child Support

by Tony Paruk, Livingston County Assistant Prosecuting Attorney

In many states, a single state agency is responsible for obtaining and enforcing child support orders. In Michigan, we have a “partnership” arrangement that involves the executive branch (Department of Human Services [DHS], Office of Child Support [OCS], the judicial branch the Circuit Court’s Friend of the Court Offices [FOC]), and the county prosecuting attorneys [PA]).

No matter how a state allocates responsibility for child support enforcement, the linchpin of the effort is Title IV-D of the federal Social Security Act. That is the source of the federal funds that states use in their enforcement efforts. That IV-D funding is crucial to our ability to enforce support orders; it provides a substantial portion of the child support enforcement budgets of all three IV-D partners.

Title IV-D also mandates certain standards with which states must comply in order to remain eligible to receive those funds. First among the requirements is that Title IV-D funds may be used only for “IV-D cases.” So, how does a case qualify as a IV-D case? Qualifying is rather easy, and most cases that have a child support order are eligible. Any parent involved in such a case may obtain assistance from the IV-D partners by requesting it from the local DHS or FOC office. The most common examples involve an unmarried parent seeking help from DHS by completing Form FIA-1201 or a divorcing parent contacting the FOC and filling out a “Verified Statement and Application for IV-D Services,” Form FOC-23.¹ Caveat to attorneys and pro se litigants: The 2005 Thompson –West edition of Michigan SCAO Approved Forms does **not** include the most recent version of this form [9/04 Revision]. Instead, the book provides an older [5/03 Revision] that does not include a boilerplate request for IV-D services. The MiCSES counterpart, form [Template No. 1111], suffers from the same defect, but that problem usually is overcome by MiCSES automatically assigning a IV-D number to any referral forwarded to a prosecutor’s office by child support specialist for case initiation.

¹ Years ago, in my first life as a deputy FOC, I and my FOC boss created what I believe was the first version of this form. Today, Form FOC-23 can be downloaded from the State Court Administrative Office website. Go to: courts.michigan.gov/scao/courtforms/domesticrelations/focgeneral/foc23.pdf

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Federal Government Involvement in the Child Support Program

by State Court Administrative Office, Friend of the Court Bureau Staff

Many federal government decisions impact the national child support program. The most significant involve funding and legislation. Recently, President Bush released his FY 2006 Health and Human Services Child Support Budget and Legislative Proposals. These proposals are aimed at improving automation tools; strengthen existing child support enforcement; and assisting families to become self-sufficient.

Budget Proposals

The President's FY 2006 budget proposals include the following appropriations. To enhance child support automation systems like MiCSES, the FY 2006 budget proposal recommends spending \$11 million for training and technical assistance. In addition, \$15 million would be appropriated for researching welfare and self-sufficiency issues.

The President has presented the following legislative proposals to improve the national child support program in FY 2006.

Legislative Proposals to Increase the Collection of Medical Child Support

- Require a health care plan administrator to notify the IV-D agency when a child loses health coverage.
- Require state child support enforcement agencies to seek medical support for children through any health insurance available to either parent.

Legislative Proposals to Further Automate All Collections For Families

- Federal seizure of accounts in multi-state financial institutions.
- Require intercept of gambling proceeds.
- Provide for garnishment of Longshore and Harbor Worker's Compensation Act benefits.
- Increase funding for access and visitation programs.
- Authorize direct tribal access to the Federal Parent Locator Service.
- Authorize contractors and IV-D Tribes to access tax offset data.

Legislative Proposals to Reform Welfare So Families May Gain Self-Sufficiency

- Assist families on TANF or formerly on TANF by sharing in the costs of state efforts to pass through and disregard child support for TANF families. A second proposal simplifies distribution rules for the benefit of former TANF families.
- Reduce the threshold for denying passports to non-custodial parents owing overdue child support from \$5,000 to \$2,500.
- Require states to charge a \$25 annual fee to families who have never received AFDC or TANF assistance and who receive child support collections through the IV-D program.

The objective of the President's proposals is to increase child support collections while reducing administrative costs. For more information about the national child support program including legislative and funding proposals please go to Office of Child Support Enforcement at: <http://www.acf.dhhs.gov/programs/cse/>.

Parenting Time Dispute Pilot Project

by State Court Administrative Office, Friend of the Court Bureau Staff

The State Court Administrative Office has launched the Post Judgment Parenting Time Dispute Pilot Project in five Michigan counties (Charlevoix, Genesee, Oakland, Oceana, and Wayne). The goal is to assist these courts in processing post-judgment parenting time complaints. The pilot project was initiated by Michigan Supreme Court Justice Maura Corrigan, to provide additional non-adversarial services to both courts and citizens.

State Court Administrative Office staff met with county friend of the court and mediation center directors to design the pilot. Soon after the initial meetings, the State Court Administrative Office designed model local administrative orders to establish procedures for the pilot project. Most of the participating friend of the court offices began referring selected parenting time disputes to the centers at the beginning of 2005.

When a parenting time complaint is received by the friend of the court office in one of the five counties, it is first screened to determine its suitability for mediation (e.g., absence of domestic violence). If the friend of the court determines the complaint is suitable for mediation, the matter is referred to the community dispute resolution program center. A volunteer mediator meets with the parents to attempt to resolve the parenting time dispute. If the matter is resolved, the mediator prepares a memorandum of understanding (MOU) that reflects the agreement. Each parent and the friend of the court receive a copy of the MOU. If no agreement can be reached the matter is referred to the friend of the court for enforcement (e.g., scheduling of a civil contempt hearing).

Each volunteer mediator has received the 40 hour training in general civil mediation. In addition, each mediator has attended the Post Judgment Parenting Time Mediation Training presented by the State Court Administrative Office. Many of the volunteer mediators have also observed friend of the court mediators and co-mediated some cases before attempting to mediate on their own.

Currently the State Court Administrative Office is gathering information from the five counties to determine the success of the pilot. Based on the early comments received, those involved seem pleased with the progress of the pilot to date. If the pilot is successful, it is anticipated more counties will be asked to participate.

"The [SCAO] has launched the Post Judgment Parenting Time Dispute Pilot Project in five Michigan counties . . ."

The Benefits of Non-Adversarial Procedures

by State Court Administrative Office, Friend of the Court Bureau Staff

There are many benefits when parents agree to utilize alternative dispute resolution (ADR) services instead of pursuing litigation. Many Michigan Family Division courts offer ADR to parties as an alternative to the more traditional domestic relations litigation. Some of the more common ADR procedures offered by courts are:

Conciliation: The parties meet with a Friend of the Court Office (FOC) employee. If the parties reach an agreement the FOC employee prepares the agreement. If the parties do not agree, the court can refer the matter to the FOC for an evaluation of the custody and parenting time issues. In some counties, if the parties do not reach an agreement the FOC employee may prepare a recommendation for a court order. If neither party files an objection, that recommendation will become an order of the court.

Court Rule Domestic Relations Mediation, MCR 3.216: This is a non-binding process in which a mediator facilitates communication between parties to promote settlement. If the parties so request, and the mediator agrees to do so, the mediator may provide a written recommendation for settling any issues that remain unresolved at the conclusion of the mediation proceeding. The court rule outlines very specific requirements regarding mediation procedures and qualifications.

Domestic Relations Mediation, MCL 552.513: The FOC is required to provide, either directly or by contract, domestic relations mediation to assist parties in settling voluntarily a post judgment dispute concerning child custody or parenting time. The Friend of the Court Act (MCL 552.513) specifies the mediation procedures and the required mediator qualifications.

Pre-Investigation Interviews: The pre-investigation interview usually is conducted by an FOC employee. The interview focuses on helping the parties reach their own decision to come to an overall agreement. The FOC employee usually has three options: (1) terminate the interview, (2) if the parents agree, prepare a summary of the agreement, or (3) refer the parties for a full FOC evaluation.

ADR tailors the processes to meet the individual needs of the parties in conflict. ADR often succeeds because it allows parties to work through their human emotions and lowers their resistance that is associated with domestic relations litigation. More often than not, parties are much more satisfied with the outcome when conflict is mediated instead of litigated. In part, this is true because ADR allows parents to take an active role regarding their children by allowing them to make decisions that are in the best interest of their children. Parties are more likely to keep their agreements because they have crafted them; as opposed to the parties being told what to do. Parties often have to wait a long time for a court date; whereas ADR is available much sooner. This allows parties to establish or reestablish a co-parenting relationship sooner.

In addition to the parties, ADR also benefits the courts. ADR greatly reduces the number of hearings and pre-trial conferences, thus saving the court time and expense. ADR can be

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Cases in Brief

by State Court Administrative Office, Friend of the Court Bureau Staff

***Grew v Knox*, _____ Mich App _____ (2/24/05)**

ISSUES: How should a court handle competing motions in which: (1) the custodial parent requests permission to change the child's legal residence; and (2) the non-custodial parent seeks a change of physical custody if the current custodial parent does move away? See MCL 722.31 [change of legal residence], MCL 722.27(c) [change of custody in light of changed circumstances], and MCL 722.23 [best interests criteria].

FACTS: The parties were divorced in Monroe County. The judgment granted them joint legal custody, but it awarded physical custody to the mother. Several years later, the mother filed a change-of-legal residence motion pursuant to MCL 722.31. She asked the court to allow her to move with the child to Grand Traverse County so that she could live near family members. The father opposed that request and filed his own countering motion that sought a change of the physical custody arrangement if the mother did leave Monroe County. Because the mother already had moved and declared her intent to remain in Grand Traverse County, the court permitted the father to have interim physical custody pending expedited hearings on the competing motions.

After an evidentiary hearing on the first motion, the court denied the mother's change-of-legal residence. Next, without conducting a separate MCL 722.23 "best interests" hearing, the court transferred "temporary physical custody" to the father for as long as the mother chose to reside in Grand Traverse County. The mother filed an appeal that raised several issues.

HELD: (1) A court may not change a previous custody order without conducting a "best interests" hearing at which it hears the evidence and determines that a change of custody is in the child's best interests. On this issue, the Court of Appeals remanded the case for a proper hearing. (2) The change of legal residence criteria in MCL 722.31 apply even to cases in which the previous custody order was entered before that statute took effect in 2001. (3) On the facts of this case, the trial court did not err by denying the mother's motion to change the child's legal residence.

***Sinha v Newberry*, [Unpublished COA Opinion (12/28/04)]. COA Docket No. 257776**

SUMMARY: *Grew v Knox*, the case discussed immediately above, reiterates the rule that a court may not order a change of custody without first conducting a "best interests" evidentiary hearing. However, simply filing a change-of-custody motion does not automatically entitle the moving party to such a hearing. To get that far, the party who seeks a change of custody must first show either "proper cause" for changing custody or a "change of circumstances" that justifies changing custody.

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Occasionally, the parent will initially contact the local prosecutor; in that situation the referral procedures vary from county to county. Regardless of how the process begins, whatever subsequent court orders are issued should include language that authorizes the partnership to provide IV-D services to the parties.

All three partners have access to the statewide computer system known as MiCSES [Michigan Child Support Enforcement System]. Whichever partner handles the initial case work will enter the case data into MiCSES so that the data can be accessed and updated by the other partners. Each IV-D case has a IV-D number. That number is essential for both accessing the case data and maintaining the case's eligibility for IV-D funding.

The important thing to remember is that, whichever partner first handles a case, that person should always verify the IV-D eligibility of the case. Michigan's continued receipt of federal IV-D funding for the case depends on that requirement being met.

Benefits of Non-Adversarial Procedures, Continued from page 4

a valuable tool for courts seeking to relieve crowded dockets and move cases efficiently.

The most common type of ADR is mediation. The State Court Administrative Office Community Dispute Resolution Program Office has produced a number of publications that explain and encourage mediation:

Resolving Your Dispute Without Going to Trial:

<http://courts.mi.gov/scao/resources/publications/pamphlets/ADRbrochure.PDF>.

Community Dispute Resolution Program website homepage:

<http://courts.michigan.gov/scao/dispute/index.htm#ben>.

Innovative Mediation Services in Michigan Trial Courts:

<http://courts.michigan.gov/scao/resources/other/InnovativePractices.pdf>.

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In this case, [*Sinha v Newberry*], the Court of Appeals affirmed the trial court's findings that the moving party had shown only "normal life changes," and had not proven either "proper cause" or a "change of circumstances" in the sense that MCL 722.27(1)(c) uses those terms. Therefore, the trial court was not required to hold a "best interests" hearing; it could deny the change-of-custody motion based solely on its preliminary findings.

Taken together, this case and *Grew* establish that: (1) a court may not **grant** a change of custody without holding a "best interests" hearing; but (2) in some situations, a court may **deny** a change-of-custody motion without holding such a hearing.

"Taken together, this case and *Grew* establish that . . . in some situations, a court may **deny** a change-of-custody motion without holding such a hearing."

Capitol Corner

by State Court Administrative Office, Friend of the Court Bureau Staff

Since the January 2005 Pundit, legislators have introduced five House and Senate bills that could impact Friends of the Court. All pending bills may be viewed at: <http://www.michiganlegislature.org/>.

House Bill 4039 would amend MCL 552.633, which is part of the Support and Parenting Time Enforcement Act. The proposed amendment would grant courts additional powers to require support payments by payers who have been found to be in contempt of court for failing to pay support as ordered. If the bill becomes law, courts could: (1) order the non-payer to find employment; (2) require the non-payer to wear an electronic monitoring device and to pay the cost of the monitoring; and (3) limit the non-payer's freedom to travel anywhere except between his or her residence and place of employment. The bill was introduced on January 27, 2005, and referred to the House Judiciary Committee.

House Bill 4161(H-2) would amend the Acknowledgement of Parentage Act. The bill provides that after a mother and father sign an acknowledgment of parentage, the mother has initial custody of the child without prejudice to the determination of either parent's custodial rights in a subsequent custody proceeding or agreement of the parents that is acknowledge by the court. The bill also modifies the acknowledgment of parentage form to include this provision. HB 4161(H-2) has been referred to the House for a vote on the passage of the bill.

House Bill 4245 would amend MCL 552.605c in the Support and Parenting Time Enforcement Act. The bill provides that if the amount received monthly from a child support payer's income withholding is greater than the monthly support order amount, the excess must be returned to the payer if the amount is greater than \$10. The bill was introduced on February 9, 2005, and referred to the House Judiciary Committee.

House Bill 4542 would amend the criminal nonsupport provisions Penal Code. The bill defines criminal non-support by classifying the offense as a felony or misdemeanor based on specified aggravating criteria and specifying the maximum penalties for each category of the crime.

- **Child support payers with an arrearage of \$20,000 or more** could be imprisoned for not more than 10 years and/or fined of not more than \$15,000, or three times the unpaid support whichever is greater. The same penalties could be imposed if the child support payer fails for more than five years to pay support as ordered by the court or has an arrearage of \$20,000 or more and has two or more prior convictions (as described in the bill).
- **Child support payers with an arrearage between \$3,000 and \$20,000** could be imprisoned for five years, and/or be fined not more \$10,000 or three times the unpaid child support, whichever is greater. The same penalties could apply to a

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child support payer who fails for more than three years but less than five years to pay support as ordered by the court, or has arrearage between \$3,000 and \$10,000 and also has one or more prior convictions (as described in the bill).

- **Child support payers with an arrearage of less than \$3,000** could be imprisoned for not more than one year and/or be fined not more than \$2,000 or three times the unpaid support, whichever is greater. The same penalties could be imposed if the child support payer has failed for more than 90 days but less than three years to pay support as ordered by the court.

This bill requires the prosecuting attorney to list the payer's prior convictions. The validity of the prior convictions would be determined by the court (not a jury) at sentencing or at a separate hearing held before sentencing. The bill was introduced on March 23, 2005, and referred to the House Judiciary Committee.

Senate Bill 60 would amend MCL 722.26c in the Child Custody Act by allowing a third party to bring an action for custody if the child's custodial parent is "incapacitated" a term that the bill also defines. The bill was introduced on January 25, 2005, and referred to Senate Judiciary Committee.

NOTE: 2005 Public Acts 564, 567, and 568 the recently enacted child support amnesty program legislation will take effect on June 1, 2005.

FYI

by State Court Administrative Office, Friend of the Court Bureau Staff

State Court Administrative Office Administrative Memorandums

Administrative Memorandum 2005-03 was distributed on February 12, 2005 (it supercedes Administrative Memorandum 2004-14). The memorandum is intended to assist friend of the court offices, by examining recent changes in the medical support provisions of the 2004 Michigan Child Support Formula. This administrative memorandum can be found at:

<http://courts.michigan.gov/scao/resources/other/scaoadm/2005/2005-03.pdf>.

Administrative Memorandum 2005- 04 was distributed on March 17, 2005. The memorandum explains how the friend of the court can administratively redirect or abate child support under certain conditions when a child no longer resides with the child support recipient. This administrative memorandum can be found at:

<http://courts.michigan.gov/scao/resources/other/scaoadm/2005/2005-04.pdf>.

Annual Statutory Review

MCL 552.524 requires that chief circuit court judges annually review the performance of each friend of the court. Public notice of the annual review is required. The Friend of the Court Bureau Policies and Procedures Memo 1984-2 recommends that the notice be published twice, 60 and 30 days before July 1, in the newspaper with the widest local circulation. Use form FOC 18, *Publication and Notice of Friend of the Court Annual Statutory Review*, which is available at:

<http://courts.michigan.gov/scao/courtforms/domesticrelations/focgeneral/foc18.pdf>.

Form FOC 17, *Friend of the Court Annual Statutory Review* (rev. 6/97) should be used to conduct the review. Form FOC 17 is available at:

<http://courts.michigan.gov/scao/courtforms/domesticrelations/focgeneral/foc17.pdf>.

Domestic Violence Screening Questionnaires

A revised Model Screening Protocol for referring domestic relations matters to mediation is now available. The screening questionnaire appearing in the protocol should be used by private mediators receiving court referrals. A companion document, "Abbreviated Domestic Violence Screening Questionnaires," contains two shorter versions of the screening questionnaire adapted for use by friend of the court and community dispute resolution program staff and mediators. The questionnaires can be found at:

<http://courts.michigan.gov/scao/resources/standards/odr/dvprotocol-abr.pdf>.